

Remarks

In the Office action, claims 1-8, 14-23, 25-28 and 31-33 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,618,904 issued to Nagy ("Nagy"). Claims 9-13, 24, 29 and 30 were deemed to be allowable if rewritten in independent form.

Claims 1-33 remain pending in this application. Reconsideration and withdrawal of the rejections in view of the following remarks is hereby respectfully requested.

A. Rejections under 35 U.S.C. §102(e):

Claims 1-8, 14-23, 25-28 and 31-33 were rejected under 35 U.S.C. 102(e) as being anticipated by Nagy.

Independent claim 1 recites a vehicle hinge for coupling a flap to a vehicle body, that includes first and second links, a first spring, "a tensioning device for tensioning the first spring in a second opening phase of the flap, and a locking device for retaining the tensioned first spring." Each of independent claims 20 and 27 also recite a similar "tensioning device" feature, whereas claim 31 recites a portion of one of the first and second links "coming into contact with said first spring in a second opening phase of the flap and tensioning the first spring back into said tensioned position."

The Examiner asserts that Nagy discloses a vehicle hinge mechanism that includes a vehicle body (34), a flap (38), a four-joint hinge including a first link (18) and a second link (16), a first spring (44), a tensioning device (22) coming into contact with the first spring in a second opening phase of the flap and tensioning the first spring back into the tensioned position, and a locking device (52, 53) for retaining the tensioned first spring. See Office action, at page 2.

In Applicant's previous response, Applicant argued that Nagy does not describe at least the feature of a tensioning device for tensioning the first spring during a second opening phase of the flap as that feature is recited in each of independent claims 1, 20, 27, and 31.

The Examiner responded to those arguments by asserting that the phrase "for tensioning the first spring in a second opening phase of the flap" does not constitute a positive limitation in any patentable sense and this is not given any patentable significance as presented in Applicant's claims, citing Ex parte Masham 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

Applicant respectfully disagrees with the Examiner's assertion on several grounds.

First, the phrase “for tensioning the first spring in a second opening phase of the flap” is not found in claim 31. Independent claim 31 recites that one of the first and second links includes “a portion coming into contact with said first spring in a second opening phase of the flap and tensioning the first spring back into said tensioned position.” It is unclear how the Examiner can consider that recitation of claim 31 to be a “recitation with respect to the manner in which a claimed apparatus is intended to be employed.” Nor, Applicant submits, can pivot pin 22 of Nagy meet that positive limitation of claim 31, since pivot pin 22 clear does not tension the first spring back into a tensioned position at any time.

Second, with respect to independent claims 1, 20, and 27, the feature objected to by the Examiner is not “a recitation with respect to the manner in which the claimed apparatus is intended to be employed,” but instead is a structural recitation of how certain features of the claimed apparatus cooperate. The Examiner’s reliance on Ex parte Masham is misplaced. That case related to a recitation *in the preamble* that described a manner in which the claimed apparatus is intended to be employed. See MPEP 2114. By contrast, the recitation of a “tensioning device for tensioning the first spring in a second opening phase of the flap” is not in the preamble of the claim, but in the body of the claim, and describes how one structural feature of the claim (the tensioning device) cooperates with another structural feature (the first spring). It does not refer to the claimed apparatus. Therefore, the phrase is not a statement of intended use for the claimed apparatus, but a proper recitation of how the claimed structural features cooperate.

Third, each of independent claims 1, 20, and 27 recite “a tensioning device.” Even ignoring the phrase “for tensioning the first spring in a second opening phase of the flap” (which Applicant submits is improper), the Examiner still cannot properly deem the pivot pin 22 of Nagy to be a “tensioning device” of any kind, as that term would be broadly understood by a person of ordinary skill in the art. The phrase “tensioning device”, is used and described throughout Applicant’s specification, for example, at page 13, line 23 to page 14, line 6, and page 16, lines 1-15. By contrast, Nagy describes pin 22 as a mere pivot pin holding joining link 16 to bracket 12 in a pivoting manner. It does not act to “tension” anything. Though coil 46 of spring 44 axially surrounds pivot pin 22, (column 5, lines 6-10), it plays no role in the tensioning of spring 44. The axially extending arms 48 and 50 of spring 44 do not engage the pin at all.

Thus, pin 22 does not perform any "tensioning" function at all, and therefore cannot properly be deemed a "tensioning device" under any reasonable interpretation of that term.

Accordingly, withdrawal to the rejections under 35 U.S.C. §102(e) is respectfully requested.

B. Allowable Subject Matter :

Applicant gratefully acknowledges that claims 9-13, 24, 29 and 30 were deemed to be allowable if rewritten in independent form. Applicant respectfully submits that the independent claims from which those claims depend are now in allowable form.

Withdrawal of the objections is respectfully requested.

CONCLUSION

It is respectfully submitted that the application is now in condition for allowance.

Respectfully submitted,

DAVIDSON, DAVIDSON & KAPPEL, LLC

By: 

William C. Gehris, Reg. No. 38,156
(signing for Thomas P. Canty, Reg. No. 44,586)

Davidson, Davidson & Kappel, LLC
485 Seventh Avenue - 14th Floor
New York, New York 10018
(212) 736-1940